HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, April 27, 2017
85th Legislature, Number 58
The House convenes at 10 a.m.
Part Two

Twenty-eight bills are on the daily calendar for second-reading consideration today. The bills on the General State Calendar analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

The House also will consider a Local, Consent, and Resolutions Calendar and a Congratulatory and Memorial Calendar.

Dwayne Bohac
Chairman
85(R) - 58

HOUSE RESEARCH ORGANIZATION

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Part 2

SUBJECT: Making dental hygiene degree program at Tyler Junior College permanent

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 9 ayes — Lozano, Raney, Alonzo, Alvarado, Button, Clardy, Howard, Morrison, Turner

0 nays

WITNESSES: For — Kristy Howell; Cherish McCoy; (*Registered, but did not testify*: Dustin Meador, Texas Association of Community Colleges)

Against — None

On — Rex Peebles, Texas Higher Education Coordinating Board; Patricia Nunn, Texas Woman's University; Carrie Hobbs and Juan Mejia, Tyler Junior College; (*Registered, but did not testify*: Sarah Van Cleef, Tyler Junior College)

BACKGROUND: The 84th Legislature in 2015 enacted HB 3348 by Clardy, which established a bachelor's degree pilot program in dental hygiene at Tyler Junior College.

DIGEST: HB 832 would remove the pilot status of a dental hygiene bachelor's degree program at a public junior college described by the bill (Tyler Junior College) and allow the program to operate as a permanent program. The Texas Higher Education Coordinating Board would be required to recommend to the Legislature that junior- and senior-level courses in the public junior college's dental hygiene bachelor's degree program receive substantially the same state funding for junior- and senior-level courses at a general academic teaching institution for substantially similar courses.

The bill would repeal the requirement for the coordinating board's submission of a progress report on the dental hygiene bachelor's degree pilot program. The coordinating board's funding recommendations would apply beginning in fiscal 2020.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

HB 832 would continue Tyler Junior College's dental hygiene bachelor's degree pilot program as a permanent program, which would help address workforce shortages and consumer access to quality dental health care in East Texas. The bill would not place a financial burden on Tyler Junior College because it would secure state funding for the permanent program, providing more opportunities for students to advance their careers, enhance their leadership skills, and meet a tangible need in their community.

OPPONENTS SAY:

HB 832 could place a financial and administrative burden on Tyler Junior College to cover operating costs as it transitions to a permanent state-funded program.

NOTES:

In its fiscal note, the Legislative Budget Board projects a cost to general revenue from increased formula funding due to additional students enrolling in the program, but this cost would not appear until at least fiscal 2020.

A companion bill, SB 834 by Hughes, was referred to the Senate Higher Education Committee on February 27.

SUBJECT: Allowing first responders to recover workers' compensation for PTSD

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Shine, Collier, Romero, Stickland, Villalba, Workman

0 nays

WITNESSES: For — Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Frederick Frazier, Dallas Police Association; Mitch Landry and Chris Orton, Texas Municipal Police Association (TMPA); John Riddle, Texas State Association of Firefighters; Robert Abbott, Travis County ESD 6; Paul Bogan, Williamson County Deputies Association; Suzy Gulliver; (*Registered, but did not testify*: Todd Harrison, Combined Law Enforcement Associations of Texas; Mary Duncan, Crime Victim Coalition; Michael Huschle, James McDade, and Robert Russ, Dallas Fire Fighters Association; Johnny Villarreal, Houston Fire Fighters Local 341; Ray Hunt, Houston Police Officers' Union; Patrick Lancton, Houston Professional Fire Fighters Association; Chris Wilson, Longview Professional Firefighter's Association; Gyl Switzer, Mental Health America of Texas; Greg Hansch, National Alliance on Mental Illness (NAMI) TX; Bradford McCutcheon, Plano Firefighters Association; Jimmy Rodriguez, San Antonio Police Officers Association; Casey Haney, State Firefighters' and Fire Marshals' Association; Rene Lara, Texas AFL-CIO; Julie Acevedo, Texas Fire Chiefs Association; Glenn Deshields, Texas State Association of Fire Fighters; Deborah Ingersoll, Texas State Troopers Association; Margaret Johnson, The League of Women Voters of Texas; James Babb, TMPA, and eight individuals)

Against — (*Registered, but did not testify*: Jay Thompson, AFACT; Shannon Meroney, Association of Fire and Casualty Companies in Texas (AFACT))

On — Amy Lee, Texas Department of Insurance, Division of Workers' Compensation; (*Registered, but did not testify*: Stephen Vollbrecht, State Office of Risk Management)

BACKGROUND:

Labor Code, sec. 408.006 specifies that mental or emotional injuries arising from personnel action are not compensable injuries for the purposes of workers' compensation.

DIGEST:

CSHB 1983 would allow first responders to receive workers' compensation for post-traumatic stress disorder (PTSD), provided that they were diagnosed with PTSD caused by an event occurring in the course and scope of the first responder's employment, and that the preponderance of evidence indicated that the event was a substantial contributing factor of the disorder.

First responders covered by the bill would include:

- peace officers;
- licensed emergency care attendants, emergency medical technicians, and paramedics; and
- certified firefighters whose principal duties are firefighting and aircraft crash and rescue.

This bill would take effect September 1, 2017, and would apply only to a claim that occurred on or after that date.

SUPPORTERS SAY:

CSHB 1983 would allow first responders to access the treatment they need without fear of professional risk or stigma. Currently, the only way for first responders to get workers' compensation coverage for PTSD is to assert that they have a mental impairment, which can be grounds for dismissal. This fear of being terminated prevents many from seeking help.

The bill would allow the state to better serve the health needs of its first responders. Firefighters and other first responders have a higher rate of PTSD than the general population, and first responder suicides are increasing in Texas. Employee assistance programs that first responders can access without being declared mentally impaired offer general practitioners who are not as qualified as PTSD specialists to evaluate the condition and provide resources for treatment. By offering specialized trauma care to first responders and better equipping them to do their jobs, the bill would increase public safety as a whole.

The bill also would provide a clear signal that Texas honors its first responders, who risk their lives and witness extreme trauma on a daily basis to protect the safety of all Texans. Offering adequate treatment to these public servants for PTSD resulting directly from their first responder duties is the right thing to do.

The potential cost posed by the bill would be insignificant and outweighed by being able to retain trained and experienced first responders.

OPPONENTS SAY:

CSHB 1983 could result in significant cost increases to insurance carriers by expanding PTSD-based workers' compensation claims. These costs would be passed along to consumers in the form of higher premiums.

NOTES:

The committee substitute would extend PTSD coverage to "first responders," while the bill as introduced would have limited coverage to "firefighters and peace officers."

A companion bill, SB 1722 by Whitmire, was referred to the Senate Business and Commerce Committee on March 22.

SUBJECT: Referring certain youths to community services in lieu of prosecution

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Dale, Moody, Schofield, Thierry

2 nays — Biedermann, Cain

WITNESSES: For — Lauren Rose, Texans Care for Children; Haley Holik, Texas Public Policy Foundation; (*Registered, but did not testify*: Terry Smith, Dallas County Juvenile Department; Will Francis, National Association of Social Workers-Texas Chapter; Katherine Barillas, One Voice Texas; Sarah Crockett, Texas CASA; Shannon Noble, Texas Counseling Association; Linda Brooke, Texas Probation Association; Ellen Arnold, Texas PTA; Pamela McPeters, TexProtects (Texas Association for the Protection of Children); Knox Kimberly, Upbring; Sacha Jacobson)

Against — None

On — Kaci Singer, Texas Juvenile Justice Department; (*Registered, but did not testify*: Jill Mata, Texas Juvenile Justice Department)

BACKGROUND: Family Code, sec. 53.01 governs the preliminary investigation of juvenile justice cases. A probation officer, intake officer, or other authorized person must conduct a preliminary investigation to determine whether the person should be released or the case should be referred to a prosecuting attorney.

DIGEST: CSHB 1204 would require a person conducting a preliminary investigation under Family Code, sec. 53.01 to refer children younger than age 12 to a community resource coordination group, local-level interagency staffing group, or community juvenile service provider in certain cases. Children under age 12 would be referred to these community services if:

- there was probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision;

- the case did not require referral to the prosecuting attorney;
- the child was eligible for deferred prosecution; and
- the child and the child's family were not currently receiving community services described in the bill and would benefit from them.

Upon receiving a referral, a community resource coordination group, local-level interagency staffing group, or other community juvenile services provider would have to evaluate the child's case and recommend appropriate services to the juvenile probation department. The probation officer would be required to create and coordinate a service plan or system of care based on those recommendations. Children and their families would have to consent to the services with knowledge that such consent was voluntary.

The probation officer could keep a child's case open for up to three months to monitor adherence to the service plan or system of care and could adjust it as necessary during that period. The child could be referred to the prosecuting attorney if the child failed to successfully participate in the required services.

The bill also would instruct juvenile boards to develop policies to prioritize the diversion of children under 12 years old from referral to a prosecuting attorney and limiting detention of such children to circumstances of last resort.

The bill would take effect September 1, 2017, and would apply only to a child's conduct that occurred on or after that date.

SUPPORTERS SAY:

CSHB 1204 would help divert young offenders from prosecution or detention and into community services tailored to their specific needs. Without early intervention, these children may engage in criminal behavior in adulthood. Detaining children who would be better served by participating in community programs is counterproductive and only reinforces an adversarial mindset among youth toward authorities.

Participation in these community services would be voluntary and intended to divert young children for whom the availability of help and

services would be more appropriate than prosecution. The services are designed to help children and their families address behavioral issues by focusing on identified concerns. If the family did not consent, or consented but failed to comply with the community services plan, the probation officer could refer the case a prosecuting attorney.

OPPONENTS SAY:

A probable cause finding would not be sufficient to justify putting children and their families through the rigors of a community services plan. The bill effectively could create a three-month term of probation without a trial on the merits and could violate due process.

SUBJECT: Qualifying certain fire responders for state workers' compensation

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Oliveira, Shine, Collier, Romero, Villalba, Workman

1 nay — Stickland

WITNESSES: For — (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association; Casey Haney, State Firefighters' and Fire Marshalls' Association; Julie Acevedo, Texas Fire Chief's Association; Ed Small, Texas Forestry Association; Glenn Deshields, Texas State Association of Fire Fighters; Robert Abbott, Travis County ESD 6, Jacob Floresx; Brad McClellan; Thomas Parkinson; Danielle Story)

Against — None

On — Stephen Vollbrecht, State Office of Risk Management; Don Galloway, Texas A&M Forest Service; Amy Lee, Texas Department of Insurance, Division of Workers' Compensation; Nim Kidd, Texas Department of Public Safety, Texas Division of Emergency Management

BACKGROUND: Government Code, sec. 418.042 requires the Texas Division of Emergency Management to prepare and maintain a comprehensive state emergency management plan designed to provide emergency relief and mitigation efforts for disasters including fire emergencies. In developing this plan, the division must consult local government and volunteer organizations. Sec. 418.110 allows the division to develop a statewide mutual aid program for fire emergencies consistent with the state emergency management plan.

Education Code, sec. 88.122 authorizes the Texas A&M Forest Service to maintain incident management teams to respond to all-hazard events. The teams may consist of Texas A&M Forest Service employees and other state, local, and volunteer responders.

DIGEST: CSHB 919 would guarantee workers' compensation coverage equivalent

to that of a state employee to non-government or local government members of fire response teams during any period in which they were trained or activated by the Texas Division of Emergency Management. Coverage would apply to members of a regional incident management team or intrastate fire mutual aid system team established under the state emergency management plan, as well as members of the statewide mutual aid program for fire emergencies. The bill would require the Texas A&M Forest Service to perform all duties of an employer for a member of one of these teams who was injured and received workers' compensation benefits.

For benefit calculation purposes, the bill would define the weekly wage of these fire response team members as the sum of the member's regular weekly wage at any employment they held, including self-employment, in addition to serving as a member of a fire response team. This amount could not exceed 100 percent of the state average weekly wage.

The bill would classify service with an intrastate fire mutual aid system team or regional incident management team to be within the course and scope of regular employment for employees of the state who were activated and for employees of the Texas A&M University System.

The bill would take effect September 1, 2017, and would apply only to a workers' compensation claim based on an injury that occurred on or after that date.

SUPPORTERS SAY:

CSHB 919 would rightfully entitle the local government and non-government volunteer members of intrastate fire mutual aid system teams and regional incident management teams to the same workers' compensation benefits afforded to their state employee counterparts. The bill would enable fire response teams to effectively provide emergency safety measures by recruiting and retaining volunteer talent through the guarantee of workers' compensation coverage. Retaining volunteers is especially important to rural communities, which may not maintain salaried first responders.

Volunteer and local government team members are performing a dangerous public service act without compensation while their state

employee counterparts are both paid and covered by workers' compensation. Extending equal coverage to these brave volunteers would be the right thing to do.

The bill would be a reasonable and limited expansion of workers' compensation. Responders would be eligible for state employee coverage only for injuries that occurred in the duration of their training and active deployment as a state fire responder. Additionally, the bill would create training cost savings by allowing the state to retain more volunteer responders.

OPPONENTS SAY:

CSHB 919 would expand state employee workers' compensation beyond its intended purpose by applying it to non-government employees. This could increase costs to insurance carriers, which would be passed along to consumers in the form of higher premiums.

SUBJECT: Prohibiting capture of certain images within 25 miles of border by drones

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — P. King, Nevárez, Burns, Hinojosa, Holland, J. Johnson, Metcalf, Schaefer, Wray

0 nays

WITNESSES: For — (*Registered, but did not testify*: Michael Pacheco, Texas Farm Bureau; Mitch Landry, Texas Municipal Police Association (TMPA); Thomas Parkinson)

Against — None

On — Thomas Ruocco, Texas Department of Public Safety

BACKGROUND: Government Code, sec. 423.003 makes it a crime to use an unmanned aircraft to capture an image of an individual or privately owned property with the intent to conduct surveillance, punishable by a class C misdemeanor (maximum fine of $500).

Under sec. 423.002, the offense does not apply to the use of unmanned aircraft to capture such images in certain circumstances, including for educational research, law enforcement and investigative purposes, utility operations, or capturing images of property located within 25 miles of the U.S. border.

Concerns have been raised that current law governs people and private properties near the U.S. border differently than the rest of the state by allowing any person to use an unmanned aircraft to capture an image with the intent to conduct surveillance on an individual or property.

DIGEST: CSHB 106 would remove from the list of activities designated lawful under Government Code, sec. 423.002 the use of an unmanned aircraft to capture an image of real property or a person on real property that is

within 25 miles of the U.S. border.

The bill also would expand the lawful use of unmanned aircraft to capture an image for certain purposes by or for a telecommunications provider.

The bill would take effect September 1, 2017, and would apply only to an offense committed on or after that date.

NOTES:

A companion bill, SB 840 by Zaffirini, was approved by the Senate on April 18.

SUBJECT: Removing conflicting requirements to get a driver's license

COMMITTEE: Transportation — favorable, without amendment

VOTE: 11 ayes — Morrison, Martinez, Burkett, Goldman, Minjarez, Phillips, Pickett, Simmons, E. Thompson, S. Thompson, Wray

0 nays

2 absent — Y. Davis, Israel

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Brian Francis, Texas Department of Licensing and Regulation)

BACKGROUND: During the 81st Legislative Session in 2009, two bills were passed that included provisions requiring applicants for a driver's license to complete a driver's education course if they were under a certain age:

- HB 339 by Phillips required applicants under 21 to complete a driver's education course; and
- SB 1317 by Wentworth required applicants under 25 to complete a driver's education course.

These requirements appear under Transportation Code, sec. 521.142(d).

DIGEST: HB 516 would require applicants for a driver's license to complete a driver's education course if they were under the age of 25. The bill would repeal the provision enacted by the 81st Legislature in 2009 that applicants under 21 complete a driver's education course.

The bill would take effect September 1, 2017.

SUPPORTERS HB 516 would prevent confusion from two contradictory statutes.

SAY:

Currently, there are two conflicting subsections under Transportation Code, sec. 521.142, and the bill would ensure the current practice of requiring applicants for a driver's license to complete a driver's education course if they are under 25 was clearly reflected in statute.

The current practice of requiring applicants under 25 to complete a driver's education course improves safety. In 2014, more than 560 drivers between the ages of 21 and 25 were in a fatal traffic accident, and drivers in these age groups were in more fatal traffic accidents than most other age groups. This bill would ensure new drivers in this age group and younger would have to pass a driver's education course, decreasing the chances of fatal car accidents.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Entitling a parent to view a deceased child's body before an autopsy

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

WITNESSES: For — Bill Gravell, Justices of the Peace and Constables Association Of Texas; Lara McDaniel; (*Registered, but did not testify*: Gina Ferguson, Brazoria County Clerk; Joyce Hudman, County and District Clerks Association; Bobby Gutierrez, Carlos Lopez, Roxanne Nelson, Wayne Mack, Jama Pantel, and Margaret Sawyer, Justices of the Peace and Constables Association of Texas; Joann Assawamatiyanont; Cindy Atkins; Theresa Chamberlain; Paul Hudman)

Against — (*Registered, but did not testify*: Andrea Schiele, Justices of the Peace and Constables Association of Texas)

BACKGROUND: Code of Criminal Procedure, ch. 49 governs inquests upon dead bodies. An inquest is defined as an investigation into the cause and circumstances of a death. Sec. 49.04 determines the circumstances in which an inquest into a death of a person is required, including when a person dies an unnatural death.

DIGEST: CSHB 298 would entitle a parent of a deceased child to view a child's body before a justice of the peace or medical examiner assumed control of the body. If the child's death occurred at a hospital or other health care facility, the viewing could take place there.

A parent of a deceased child would not be allowed to view the child's body after the justice of the peace or medical examiner had assumed control unless the parent first obtained consent from the justice of the peace or medical examiner, or a person acting on their behalf.

If the death of the child was subject to an inquest as determined by the

justice of the peace or medical examiner, a viewing of the body would have to be conducted under certain conditions. The viewing would have to be supervised by a physician, registered nurse, licensed vocational nurse, justice of the peace, or the medical examiner. The parent would not be permitted to have contact with the child's body without first obtaining consent from the justice of the peace or medical examiner, or someone acting on their behalf.

A person would be prohibited from removing a medical device from the child's body or otherwise altering the condition of the body for the purposes of the viewing without first obtaining consent from the justice of the peace, medical examiner, or someone acting on their behalf. A person would not be entitled to compensation for performing duties on behalf of a justice of the peace or medical examiner unless compensation was approved by the applicable commissioners court.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 298 would protect a parent's right to view the body of their deceased child and say goodbye before a justice of the peace or medical examiner assumed control of the body, which would help ensure that families are treated respectfully by authorities at an immensely difficult and emotional time.

Currently, in situations in which an inquest has been ordered because a child died an unnatural death, parents can be prohibited from seeing their child's body until after the body has undergone an autopsy. Parents deserve the right to see their child before law enforcement has examined the body.

The committee substitute made changes to the bill as filed to ensure that the proper protections were in place to make sure that a body was not tampered with in a way that could jeopardize an investigation. After a justice of the peace or medical examiner had assumed control of the body, a parent would be supervised by these officials, a person acting on their behalf, or a physician, registered nurse, or licensed vocational nurse during the viewing. The body could not be touched or altered without the consent of these officials, which would prevent any potential tampering

with evidence.

No parent should have to bury their child, but this bill would ensure that families had the right to say goodbye to loved ones in these tragic circumstances.

OPPONENTS SAY:

CSHB 298 appropriately would focus on the rights of parents, but the rights of the deceased, who may have been the victim of wrongdoing, also deserve protection. While the committee substitute would be more effective than the bill as filed in protecting the rights of the deceased by ensuring that the chain of custody for evidence was protected, the state should remain cautious about changing the law in a way that could affect chain-of-custody issues and should ensure that those who might oversee or permit a viewing were narrowly defined.

NOTES:

The committee substitute differs from the bill as filed in that CSHB 298 would allow a parent to have contact with the body of their deceased child if the justice of the peace or medical examiner who had assumed control over the body first gave consent. The committee substitute also would impose these conditions on parents viewing the child's body if the death was under inquest, rather than if the death did not occur at a hospital or other institution.

A companion bill, SB 239 by Campbell, was approved the Senate on April 20.

SUBJECT: Revising operations and establishing a Sunset review schedule for ERS

COMMITTEE: Pensions — committee substitute recommended

VOTE: 6 ayes — Flynn, Alonzo, Hefner, Huberty, Paul, J. Rodriguez

0 nays

1 absent — Anchia

WITNESSES: For — (*Registered, but did not testify*: David Sinclair, Game Warden Peace Officers Association; Clay Taylor, Texas Department of Public Safety Officers Association; Katy Reagan, Texas Public Employees Association)

Against — None

On — (*Registered, but did not testify*: Porter Wilson, Employees Retirement System of Texas; Emily Johnson, Sunset Advisory Commission; Brian Guthrie, Teacher Retirement System)

BACKGROUND: The Employees Retirement System of Texas (ERS) was created by a constitutional amendment in 1947. As a constitutionally created agency, ERS is not subject to traditional Sunset provisions and had not been reviewed since the 1992-93 review cycle. The 84th Legislature in 2015 placed ERS under Sunset review after concerns arose about its process in procuring a new vendor for its group benefits program.

Functions. ERS administers the retirement fund, health and optional insurance coverage, and other benefit programs for its members, including state and higher education employees, retirees, and their dependents.

Governing structure. A six-member board of trustees governs the agency. The governor, House speaker, and Texas Supreme Court chief justice each appoint one member and the remaining three are active state employees elected by state employees and retirees. All board members serve staggered six-year terms.

Funding. ERS is funded through state and member contributions and

returns from investments. It also receives some federal funds. The total revenue available to ERS in fiscal year 2015 was $4.5 billion. ERS benefit payments in fiscal year 2015 totaled $5.2 billion.

Staffing. In fiscal year 2015 ERS employed 350 staff at its Austin headquarters and 15 contract employees at a call center in Harlingen. The agency also uses outside consultants and investment advisors.

DIGEST:

CSHB 2459 would place the Employees Retirement System of Texas (ERS) under Sunset review while stipulating that the agency would not be abolished. The Sunset review would be set for 2029 and every 12th year after.

It would limit alternative investments and require tracking and reporting of profit-sharing arrangements associated with those investments. The bill would require the agency to implement a process to allow members enrolled in the group benefits program to participate directly in an appeal of an enrollment or claim decision. It would repeal a requirement for a cost-of-living increase for retirees if the retirement fund reaches a certain level.

Alternative investments. The bill would limit the amount of assets that ERS staff could direct to a single "alternative investment," defined as an investment in an asset other than a traditional asset, including a private equity fund, private real estate fund, hedge fund, or infrastructure fund. No more than 1 percent of the fund's total market value as reported in the most recent annual financial report could be invested in an alternative investment without approval from the ERS board.

The bill contains provisions that would allow the board to discuss an alternative investment or potential investment in a closed meeting and vote in an open meeting.

The board would be required to develop a consistent method for calculating data on "profit share," defined as an amount received by a private professional investment manager either in consideration for achieving certain investment returns or as part of the sharing of investment returns between the manager and investor. This would include

a performance fee, incentive fee, and carried interest. The board would be required to report, at a minimum, the aggregate amount of profit shares paid to private investment managers, categorized by asset class, in the agency's comprehensive annual financial report.

Group benefits program. The bill would require the agency to implement a process to allow members enrolled in the group benefits program to participate directly in an appeal of an enrollment or claim decision.

The board would be required to develop and maintain a precedent manual related to agency determinations concerning appeals of enrollment and claims decisions. The manual would be composed of precedent-establishing determinations made initially and on appeal by the board, executive director, or staff. It would be made available to members and staff. The board and staff would not be bound by a decision in the manual.

Cost-of-living adjustment. The bill would repeal Government Code, sec. 814.604, which requires ERS to grant a one-time cost-of-living adjustment to a retiree who has been retired for at least 20 years when the pension fund's unfunded actuarial liabilities do not exceed 30 years by one or more years.

Other provisions. At least once every four years the board would be required to adopt tables related to actuarial assumptions; make an actuarial experience investigation of members' mortality, service, and compensation; and make a valuation of the retirement fund's assets and liabilities.

The bill would change the due date from January to February for the agency's annual report to the governor and legislative leaders. The report would be expanded to include information about group coverage plans, benefit changes, and recommendations for statutory changes.

The bill would add standard sunset provisions governing board training and use of alternative rulemaking and dispute resolution.

Effective date. The bill would take effect September 1, 2017, and would

apply only to contracts between ERS and a private investment manager entered into or renewed after that date.

SUPPORTERS SAY:

CSHB 2459 would put the Employees Retirement System (ERS) under a 12-year Sunset review cycle, allowing the Legislature to provide oversight of the agency that is responsible for managing the retirement and health benefits for hundreds of thousands of state employees and retirees. Although ERS has taken management actions to address the contracting concerns that prompted this review, the review identified other issues and made recommendations that would be implemented through the bill.

Alternative investments. The bill's requirements related to alternative investments would promote transparency and oversight. Disclosure of fees and profit-sharing arrangements would demonstrate to pension plan members that ERS is getting fair deals with their investment dollars. Tracking and reporting the fees would help ERS better assess the costs of alternative investments compared to other asset classes. This would give staff and the ERS board the data needed to make more informed decisions about the fund's asset allocations.

The requirement for board approval of alternative investments that are more than 1 percent of the fund's value would set a standard that would appropriately fluctuate with the fund and allow ERS to continue diversifying its portfolio.

The bill also would clarify that the board could discuss alternative investment contracts in closed meetings, ensuring that such discussions do not telegraph potential investment decisions before they are made in an open meeting.

Group benefits program. The bill would address concerns raised during the Sunset review that ERS lacks balance in its treatment of members during the agency's insurance appeals process. It would allow more direct interaction with agency staff, allowing members to take a more active role in presenting their case and hearing opposing points. These communications could help agency staff identify and solve issues that lead to insurance appeals and change the agency's tendency to attribute most appeals to member error.

The requirement for ERS to establish a precedent manual would provide useful information for members and ERS staff to compare an issue to previous decisions on insurance plan requirements. The manual would not be binding but would provide guidance on how ERS has considered similar facts.

Cost-of-living adjustment. Although not a part of the ERS Sunset review, the bill would remove a requirement for an automatic cost-of-living adjustment for long-time retirees when the fund reaches actuarial soundness. While cost-of-living adjustments may be beneficial to retirees, they can be detrimental to the actuarial soundness of the plan for future retirees and employees. ERS would retain the legal flexibility to pay a "13th check" to all retirees under certain conditions.

OPPONENTS SAY:

Alternative investments. Alternative investments currently account for about 25 percent of the retirement fund's investment portfolio and typically have better returns than traditional investments. Disclosure of fees and profit-sharing arrangements with outside fund managers could result in a public backlash and lead to fewer alternative investments and the loss of their potential for higher returns. In addition, fund managers could decide not to contract with ERS due to concerns that their proprietary fee structures would be available to their competitors.

Group benefits program. The precedents manual could create confusion and invite litigation if members believe their issue being appealed should be decided in the same manner as a similar case.

Cost-of-living adjustment. Retired state employees have not received an increase in their pensions since 2002 even as inflation makes their checks less valuable. These longtime retirees deserve an increase when the fund reaches actuarial soundness and the requirement for an automatic increase should not be repealed.

NOTES:

A companion bill, SB 301 by Watson, was approved by the Senate on April 4 and reported favorably by the House Pensions Committee on April 24.

SUBJECT: Phasing out the franchise tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — D. Bonnen, Y. Davis, Bohac, Darby, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

1 absent — E. Johnson

WITNESSES: For — Samuel Sheetz, Americans for Prosperity-Texas; Will Newton, National Federation of Independent Business-Texas; James LeBas, Texas Chemical Council; Vance Ginn, Texas Public Policy Foundation; Dale Craymer, Texas Taxpayers and Research Association; (*Registered, but did not testify*: James LeBas, Association of Electric Companies of Texas, Texas Oil and Gas Association; Audra Conwell, Alliance of Independent Pharmacists of Texas; Jerome Greener, Americans for Prosperity-Texas; June Deadrick, CenterPoint Energy; Justin MacDonald, Hill Country Builders Association; John Kroll, MuniServices; Josiah Neeley, R Street Institute; David Mintz, Texas Apartment Association; Daniel Gonzalez and Julia Parenteau, Texas Association of Realtors; Scott Norman, Texas Association of Builders; Stephen Minick, Texas Association of Business; Robert Braziel, Texas Automobile Dealers Association; John Colyandro, Texas Conservative Coalition; Mario Munoz, Texas Merchandise Vending Association; Jim Sheer, Texas Retailers Association; Tricia Davis, Texas Royalty Council)

Against — Dick Lavine, Center for Public Policy Priorities; (*Registered, but did not testify*: Rene Lara, Texas AFL-CIO; Juan Flores, Texas Latino Education Coalition; Dwight Harris, American Federation of Teachers-Texas)

BACKGROUND: The Texas margins tax, or the "franchise tax," applies to each taxable entity that does business or is organized in the state. Under Tax Code, sec. 171.002, as amended by HB 32 by D. Bonnen in 2015, the tax is calculated as either 0.75 percent or 0.375 percent of taxable margin, with

the lower rate applying to taxable entities primarily engaged in retail or wholesale trade.

Tax Code, sec. 171.1016 provides for an “E-Z computation and rate.” A taxable entity with total revenue of $20 million or less may choose to pay the franchise tax using this calculation. The E-Z rate, as amended by HB 32, is 0.331 percent.

According to the comptroller's biennial revenue estimate, the franchise tax collections are expected to be $7.82 billion in the 2018-19 biennium.

DIGEST:

CSHB 28 would require the comptroller to set the franchise tax rates to rates such that collections would be reduced by a certain amount. That amount would be either the ending balance of general revenue related funds in the preceding biennium or $3.5 billion, whichever is less.

The comptroller would be required to publish notice of the adjusted tax rates by December 15 of each odd-numbered year.

Each tax rate would be reduced proportionally. In a fiscal year that the adjusted tax rate would be less than 15 percent of the fiscal 2018 tax rate, the franchise tax would be eliminated and taxable entities no longer would be required to file or pay a tax.

CSHB 28 would take effect September 1, 2019, and would apply only to a report originally due on or after January 1, 2020.

The bill would not affect the applicability of existing law to audits, deficiencies, refunds, until barred by limitations. It also would not affect the status of a taxable entity that had certain privileges or certificates revoked; the ability of the comptroller, secretary of state, or attorney general to take action against taxable entities for actions that took place before the franchise tax was eliminated; nor the right of a taxable entity to contest a forfeiture, revocation, or lawsuit.

SUPPORTERS SAY:

CSHB 28 would be a boon for economic growth, eliminating the most burdensome tax currently imposed in Texas while maintaining the state's ability to meet its obligations.

Effectiveness. The franchise tax imposes major limitations on the Texas economy, and its phase-out could result in a gain of up to $16 billion in real personal income and nearly 130,000 jobs created in the state.

There are several qualitative reasons for these estimates, as the franchise tax imposes a variety of economic costs. Any form of business income tax effectively increases the cost of goods, which already are subject to sales tax, creating a tax pyramiding effect that is passed on to consumers. Additionally, the franchise tax imposes compliance costs on businesses. The majority of businesses do not use the E-Z computation, preferring the cost-of-goods-sold deduction, which can reduce their tax burden while increasing accounting costs and overhead. These compliance costs are not worth the limited amount of revenue the franchise tax contributes to the state budget.

Additionally, these compliance costs can drive away businesses considering locating in Texas. The Tax Foundation ranks Texas has having only the 14th best business tax climate, even though the state could be among the best if it eliminated the franchise tax. A state having no business or personal income tax is a huge draw for businesses considering relocation, and this in itself would create a solid return on investment for the bill. The direct impacts of relocating businesses would be magnified by the dynamic effects of economic activity, as more and more people move to Texas, work, spend, and create jobs.

While the franchise tax most directly burdens businesses, those costs, and thus the benefits of CSHB 28, are passed on to consumers in the form of higher prices and lower incomes. In fact, according to data from the comptroller, the franchise tax disproportionately burdens lower-income Texans as a percentage of their total household income. Though the aggregate impact of the bill would affect upper-income quintiles more, lower-income citizens would see a more direct benefits as a percentage of their income.

Available revenue. While CSHB 28 would reduce revenue available in the future, based in part on balances in general revenue dedicated accounts, it is still up to the Legislature to decide to spend that money or

not. Thus, for the purposes of certification, the money is still fungible.

Revenue volatility. Although CSHB 28 could result in increased revenue volatility, any variations would force the state to be more fiscally responsible. Even then, the state still would retain a sizeable balance in the Economic Stabilization Fund that could be used to reduce volatility, and sales tax collections are the first type of tax collections to pick up after a recession, which should limit any hardship.

Property taxes. The bill would use natural economic growth to phase out one of the most harmful taxes. While future franchise tax revenue could be used to offset property taxes, doing so would impose more economic costs because the franchise tax is so inefficient. It is better for the state to realize the economic benefits of eliminating the franchise tax than to try to inefficiently buy down property taxes.

Spending alternatives. Cutting the franchise tax would result in a higher return on investment than spending on education. Tax cuts — particularly cuts to the franchise tax — put money back into the economy, allowing businesses to create more jobs, which in turn increases consumer spending and other types of tax collections. For instance, in 2015 the Legislature cut the franchise tax rates by 25 percent with HB 32 by D. Bonnen, but revenue was only reduced by around 18 percent, possibly due to this dynamic effect.

Accountability. Many bills make obligations that the state must fulfill in the future, and this bill is no different. The franchise tax has such a profound negative impact on the Texas economy that it is worth making this particular obligation now.

Fairness. The franchise tax is structured such that some taxable entities must pay tax even when they are losing money. About 57 percent of responding members of the National Federation of Independent Business/Texas surveyed have had to pay the franchise tax in years when they did not make a profit. While the Legislature could restructure the tax to resolve this issue, eliminating it would be better so as to secure the economic benefits.

OPPONENTS SAY:

CSHB 28 would lock the state into losing revenue that should be used to fund schools, place the state in a precarious fiscal position in future biennia, and threaten its ability to meet its long-term obligations.

Effectiveness. Any positive effects from the bill would merely make the tax system in Texas more regressive. According to the Legislative Budget Board, less than 6 percent of the reduction in tax incidence would go to the lowest income quintile, whereas the highest income quintile would receive 28 percent of the total reduction in tax incidence. The elimination of a revenue stream that is paid mostly by businesses would leave Texas almost totally reliant on the sales tax, which is highly regressive and hurts low-income citizens most.

The Legislative Budget Board also estimates that around 30 percent of the reduced tax incidence would go to out-of-state residents and would not directly benefit Texans.

Available revenue. CSHB 28 would place the state in a dangerous situation that would cause cuts to state services. The bill would treat the ending balance of general revenue related funds as though the revenue was totally available. However, in fiscal 2016-17, around $3.48 billion of the roughly $4.09 billion ending balance consisted of general revenue dedicated funds not spent but available to be used for certification. These funds are not simply general revenue, but originally collected for a particular purpose. Additionally, that $4 billion could include up to $2.5 billion in sales tax revenue that is constitutionally required to be transferred to the State Highway Fund. These factors create an illusion of revenue available, even though the state is obligated to use it for a particular purpose.

CSHB 28 also would limit the state's ability to address possible future crises in budget areas such as the Employees Retirement System of Texas, the Teacher's Retirement System, and the Texas Tomorrow Fund. Unfunded liabilities from these programs demand funding to keep them actuarially sound. The state should ensure it can fulfill its obligations before cutting taxes.

Revenue volatility. CSHB 28 would leave the state reliant on

consumption taxes, which are historically volatile when compared to other types of taxes. The first thing consumers do during a recession is to cut their spending, which would directly impact the state budget. This would be magnified if the state were to be left with basically a single major revenue source in the sales tax. Because the Legislature has limitations on deficit spending, fluctuations in revenue would, under CSHB 28, result in much more harmful cuts to services such as human services and education.

Property taxes. CSHB 28 would not actually reduce the total tax burden, merely shifting it to other state revenue streams, the property tax system, and local government coffers. The property tax relief fund receives about half of its revenue from the franchise tax, and eliminating a method of finance merely requires the state to make it up with general revenue. This reduces general revenue that otherwise would be available to further provide potential property tax relief or increase the state's share of education funding, meaning that businesses and individuals could pay higher property taxes.

Spending alternatives. Education in Texas is critically underfunded, and the state will need additional funds in future biennia to cover its growing needs. Fully funding public education and higher education would have a better return on investment than any tax cut. At a time when the Legislature is considering reducing funding for its premier academic institution, it should not eliminate a much-needed stream of revenue.

Accountability. CSHB 28 would effectively take away control of a large piece of the state budget, and voters cannot hold their legislators accountable for decisions they did not make. This bill would obligate future legislators to dedicate up to $3.5 billion to reduce franchise tax rates, even if doing so would be fiscally irresponsible.

OTHER OPPONENTS SAY:

Fairness. CSHB 28 would go too far in eliminating the franchise tax. The Legislature instead should focus on fixing the franchise tax to make it more fair or to reduce compliance costs. This would avoid the long-term fiscal disadvantages while gaining some of the economic benefits associated with elimination.

NOTES: The Legislative Budget Board estimates that the bill would have a negative impact of up to $3.5 billion to the general revenue fund in fiscal 2020-21 and subsequent biennia.

SUBJECT: Changing statute related to the Texas Funeral Service Commission

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Collier, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

1 absent — Coleman

WITNESSES: For — Bill Haley, Texas Funeral Directors Association; (*Registered, but did not testify*: Johnnie B. Rogers Jr, Service Corporation International.; Lee Castro; Bernardino Pedraza)

Against — None

On — Janice McCoy, Texas Funeral Service Commission

BACKGROUND: The Texas Funeral Service Commission is responsible for regulating the funeral industry and protecting the public from deceptive practices through a process of impartial enforcement, inspection, licensing, and education to guarantee every citizen's final disposition is conducted professionally and ethically. The commission is composed of seven commissioners appointed by the governor with the advice and consent of the Senate, including:

- two members licensed as both an embalmer and a funeral director for at least five years before appointment;
- one member registered as a cemetery owner or operator; and
- four public members.

The Occupations Code affecting the Texas Funeral Service Commission has not been updated in several years, and some observers say the code should be updated to reflect current commission and industry practices.

DIGEST: HB 1292 would change statutory provisions related to the Texas Funeral

Service Commission, including commission membership, crematory, cemetery, and funeral establishment inspection, funeral director and embalmer licensing, commercial embalming establishment regulation, body removal regulation, printing of public interest brochures, and violations.

Commission membership. The bill would require the member of the commission who was a registered cemetery owner or operator to also be licensed as a funeral director.

Setting fees. The bill would require the commission to set the funeral director's and embalmer's license renewal fee, late renewal penalty, and replacement license fee. The commission also would set continuing education fees and a provisional license application fee rather than a provisional license fee. The bill would remove a statutory prohibition on charging fees to a perpetual care cemetery, including a fee for issuing or renewing a license.

Crematory or funeral establishment inspection. The bill would require a crematory or funeral establishment to be inspected before an initial license could be issued to those establishments. An inspection report would be kept in the crematory's or funeral establishment's licensing file.

Cemetery inspection. The bill would limit commission inspection requirements to only those cemeteries licensed by the commission. It would remove a requirement for a licensed cemetery to be inspected at least once every two years or annually if the commission found a violation. The bill would remove a requirement for the commission by rule to establish procedures and criteria for cemetery inspection and would remove related statutes regulating cemetery inspection. Under the bill, a premises on which interment was practiced would not be required to be open at all times to inspection.

Funeral director's or embalmer's license. The bill would authorize the commission to adopt license application requirements for a funeral director's license or an embalmer's license and would remove the requirement that the applicant submit a written application to the commission and pay the application fee. HB 1292 would specify that a

license would be issued by the commission to authorize the license holder to practice embalming, funeral directing, or both. The bill would authorize the commission to allow a person to apply for a funeral director's or embalmer's license by completing a provisional license program.

The bill would remove a statutory requirement for a funeral director's or embalmer's license applicant to appear before at least one member of the commission for application approval and would remove a provision making approval subject to review by the entire commission. HB 1292 would remove a provision requiring the commission to keep a permanent, alphabetical record of each license application and the actions taken.

The bill would authorize the commission by rule to allow an applicant who graduated from a school or college of mortuary science that was no longer accredited to become licensed as a funeral director or embalmer.

HB 1292 would specify that a funeral director's or embalmer's license would be valid for 24 months and would require rather than allow the commission to adopt a system by rule under which licenses expire. The commission would be required to prorate license fees for an initial license that was issued for fewer than 24 months rather than to take into account the year in which the license expiration date was changed.

Hearing regarding license denial. The bill would allow the commission to refuse to issue or renew a license or provisional license after, rather than before, a hearing and would allow the commission to refuse to issue or renew a license to a person with a criminal conviction.

Mortuary law exam. The bill would require the commission to administer or arrange for the administration of a written examination on mortuary law developed by or for the commission and would specify the content of the exam.

Funeral director's license and embalmer's license exams. The bill would require an applicant for a funeral director's or an embalmer's license to have successfully completed written examinations as applicable, rather than one examination. A funeral director's license or embalmer's license examination no longer would be required to include a written

examination on information that would be in the mortuary law exam. The bill would remove a statutory requirement for funeral director's license and embalmer's license examinations to be held at least annually and with notice. It also would remove requirements in statute for the commission to notify a person within 30 days after taking the examination as well as other examination-related notification requirements.

License applicants who held an out-of-state license. The bill would require funeral director's or embalmer's license applicants who were licensed outside of Texas to pay a license fee in an amount set by the commission once their applications were approved. Out-of-state applicants also would be required to file an affidavit that the applicant had graduated from an accredited college of mortuary science. Out-of-state license applicants would be required to file a sworn statement that the out-of-state license was in effect at the time the applicant left his or her former state, country, or territory. The bill would remove an existing requirement for an applicant to provide proof of good standing.

HB 1292 would require an applicant who held an out-of-state license to submit to a criminal background check before submitting a license application. It would remove the requirement in statute for the commission to conduct the background check. The bill also would require an out-of-state license applicant to complete the mortuary examination as specified by the bill. If a person who held a Texas license and another state's license wished to obtain a new Texas license without reexamination, the bill would require both licenses to be in good standing.

Duplicate licenses. The bill would allow the commission to issue a replacement license rather than a duplicate license if the license was lost or destroyed, with an application and payment of a commission-set fee if the license holder needed a license to display in multiple locations. A license holder could display a duplicate original license or replacement license at the person’s place of business in place of the original license.

Reinstating a license. The bill would specify that a person whose license had been expired for one or more years could reinstate a suspended license by retaking and passing the mortuary examination as specified in the bill. HB 1292 would specify other requirements for reinstating a

suspended license.

Reissuing a license. The bill would specify that a hearing to determine whether to reissue a license would be held before an administrative law judge, not a hearings officer. A license that had been revoked could be reissued only after the applicant:

- retook and passed the mortuary exam created by the bill;
- paid a fee equal to twice the normally required renewal fee;
- satisfied any other commission requirements; and
- paid any penalty assessed by the commission.

The bill would require a funeral establishment to:

- have access to "vehicles," rather than "rolling stock," of at least one motor hearse;
- include a display of merchandise including at least two rather than five adult caskets, one of which would have to be the least expensive casket offered, that were displayed in a setting that allowed for private selection; and
- conspicuously display the funeral establishment's license.

The bill would specify how the funeral establishment's caskets would be displayed. It would remove a requirement for a funeral establishment to have a casket showroom and other casket-related display requirements. If the commission exempted a funeral establishment from the requirement to have a preparation room for embalming, the exemption would remain in effect until the conditions required for the exemption no longer were met.

Defining embalming establishments. HB 1292 would define a commercial embalming establishment to mean a funeral establishment that met certain requirements. An establishment that functioned solely as a commercial embalming establishment would be required to hold a funeral establishment license and comply with certain requirements of that license, including a requirement to meet fire and safety standards and to have a hearse.

Removal of dead human body. The bill would require a funeral director to direct the pickup of a dead human body, except when directed otherwise by a justice of the peace or other law enforcement official. A funeral director could direct an unlicensed person, provisional license holder, or an embalmer in removing a dead human body. A funeral director would be strictly accountable for compliance with requirements of the bill. If an unlicensed person, a provisional license holder, or an embalmer inadvertently encountered a family member or other person with whom funeral arrangements were normally made, the person would restrict communication with the family member or other person to identifying the person's employer and making any disclosure to the family member or other person required by federal or state law or regulation. The funeral director would not have to provide a funeral director or an embalmer for direction or personal supervision for a first call.

Embalmer-in-charge. The bill would require a commercial embalming establishment to designate to the commission an embalmer-in-charge who would be directly responsible for the embalming business and to notify the commission of any change in that designation. The embalmer-in-charge could be charged with violations if one occurred in the establishment.

Violations. HB 1292 would define unethical conduct violations. It would be a defense to a violation if the licensee represented in writing to the license holder that the person was authorized to make funeral arrangements.

The bill would require the commission to issue a report after determining that a violation had occurred and would specify how the commission would give notice to the person charged. The commission could suspend or revoke a license without a hearing if it determined the license holder violated the terms of probation. The bill would specify procedures for appeal and would require the commission to adopt by rule a sanctions schedule.

Complaint records. HB 1292 would require the commission to maintain a record rather than a file on each written complaint filed with the commission.

Repealed statute. The bill would remove sections of statute with language similar to provisions added by the bill and other subjects, including certificates of merit for foreign students, provisional licenses for out-of-state licensees, renewal of expired licenses, renewal of a cemetery or funeral establishment license for a perpetual care cemetery, perpetual care cemetery registration, license denial and the effect of a criminal conviction, temporary license suspension or restriction, commission reprimands, and disciplinary and hearing proceedings.

Public interest brochure and website link. The bill would allow a funeral establishment to print additional copies of the public interest information brochure required under Occupations Code, sec. 651.201 only if the commission was unable to provide the number of brochures needed by the establishment. The bill also would authorize the Texas Funeral Service Commission to allow a funeral establishment's website to link to the commission's website.

Applicability of the bill's provisions. Certain provisions in the bill would apply only to a member of the Texas Funeral Service Commission appointed on or after September 1, 2017. A member appointed before that date could continue to serve until the expiration of his or her term. Certain other provisions in the bill also would apply only to applicants for a funeral director's license or embalmer's license who applied on or after September 1, 2017. A person who applied for a funeral director's license, embalmer's license, license reinstatement, license renewal, or license reissuance before that date would be governed by the relevant law in effect on the date the person applied and the relevant former law as specified in the bill would be continued in effect for that purpose.

Certain bill provisions would apply only to a violation that occurred on or after September 1, 2017, a person placed on probation on or after that date, or a proceeding initiated on or after that date.

The bill would take effect September 1, 2017.

NOTES: A companion bill, SB 983 by Estes, was referred to the Senate Business and Commerce committee on March 6.

SUBJECT: Transferring certain duties to CPS division at DFPS

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Raymond, Frank, Miller, Minjarez, Rose, Swanson, Wu

0 nays

2 absent — Keough, Klick

WITNESSES: For — Christina Green, Children's Advocacy Centers of Texas, Inc.; Sarah Crockett, Texas CASA; (*Registered, but did not testify*: Will Francis, National Association of Social Workers-Texas Chapter; Pamela McPeters, Texas Association for the Protection of Children; Joshua Houston, Texas Impact)

Against — None

On — (*Registered, but did not testify*: Doug Barnes and Jean Shaw, Department of Family and Protective Services)

BACKGROUND: Family Code, sec. 261.001 outlines the definitions of abuse and neglect used by the Child Protective Services division at the Department of Family and Protective Services (DFPS) during investigations of alleged child abuse and neglect at a child's home. Sec. 261.401(a) outlines the definitions of abuse, neglect, and exploitation used by the Child-Care Licensing division at DFPS and other state agencies to investigate reports of abuse, neglect, and exploitation at certain child-care facilities. Sec. 261.401(b) directs a state agency to conduct a prompt, thorough investigation to ensure the protection of a child.

Family Code, sec. 261.301(b) requires a state agency to investigate a report of alleged abuse or neglect occurring at a facility operated, licensed, certified, or registered by that agency. Under sec. 261.301(f), a state agency must conduct a joint investigation with a law enforcement agency to investigate an allegation of abuse constituting a criminal offense that poses an immediate risk of physical or sexual abuse that could result in

the death of or serious harm to a child.

DIGEST:

CSHB 249 would require the Department of Family and Protective Services (DFPS) to transfer the responsibility of conducting investigations of alleged abuse, neglect, or exploitation occurring at certain child-care facilities to its Child Protective Services (CPS) division. The bill would repeal the abuse, neglect, and exploitation definitions used by the Texas Child-Care Licensing (CCL) division at DFPS and other state agencies under Family Code, sec. 261.401. DFPS instead would adopt a definition of exploitation under Family Code, sec. 261.001.

The bill would direct DFPS to investigate a report of alleged abuse, neglect, or exploitation occurring at a facility operated, licensed, certified, or registered by a state agency, including certain facilities regulated by DFPS.

DFPS would have to create standardized policies to use during investigations. It would implement these standardized definitions and policies by December 1, 2017. The DFPS commissioner could establish specialized units within CPS to investigate allegations of child abuse, neglect, and exploitation at child-care facilities, and could require investigators to receive ongoing training on minimum licensing standards.

CSHB 249 would allow the Health and Human Services Commission executive commissioner to adopt rules to implement provisions on CPS investigations of abuse, neglect, and exploitation allegations at child-care facilities.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 249 would streamline investigations of alleged child abuse, neglect, and exploitation. The Child Protective Services (CPS) and Child-Care Licensing (CCL) divisions at the Department of Family and Protective Services (DFPS) focus on different priorities regarding the investigation of child abuse and neglect allegations. CPS is required to assess actual and potential harm to children, whereas CCL is required only to assess the actual harm to children. Consolidating all child abuse and neglect investigations at CPS would ensure every child received the same

investigation quality regardless of where a child was victimized.

Standardizing the definition of abuse, neglect, and exploitation would reduce confusion. CPS definitions of child abuse and neglect are comprehensive, whereas CCL definitions of child abuse and neglect are narrowly tailored to promote facility compliance with minimum licensing standards. Adopting uniform definitions of abuse, neglect, and exploitation would ensure safety standards for children were applied consistently.

OPPONENTS SAY:

CSHB 249 would duplicate child abuse, neglect, and exploitation investigations at juvenile justice facilities by requiring DFPS to conduct such investigations of all state-operated facilities. Although the Texas Juvenile Justice Department (TJJD) would maintain its authority to conduct investigations of its facilities under Family Code, sec. 261.405, the bill could result in DFPS and TJJD conducting identical investigations of a TJJD facility. Instead of duplicating investigations, CSHB 249 should require DFPS to conduct investigations only of its regulated facilities. The bill also should allow other state agencies to continue assisting with joint-investigation efforts in severe child abuse, neglect, and exploitation cases.

SUBJECT: Creating a health care provider participation program in Grayson County

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 8 ayes — Springer, Biedermann, Hunter, Neave, Roberts, Stickland, Thierry, Uresti

0 nays

1 absent — Coleman

WITNESSES: For — Charles Luband, AHCV; Bill Magers, Grayson County Commissioner's Court; Donald Lee, Texas Conference of Urban Counties; Gerard Hebert, Texoma Medical Center; Charles Cave, Wilson N. Jones Medical Center; (*Registered, but did not testify*: Jared Johnson, City of Denison; John Hawkins, Texas Hospital Association)

Against — None

On — (*Registered, but did not testify*: Ardas Khalsa, Health and Human Services Commission)

BACKGROUND: The Medicaid sec. 1115 transformation waiver is a 5-year demonstration project in effect through December 2017. The sec. 1115 waiver provides supplemental funding to certain Medicaid providers in Texas through the uncompensated care pool and the Delivery System Reform Incentive Payment (DSRIP) pool. The Health and Human Services Commission has requested an additional 21-month extension of the sec. 1115 waiver, through September 30, 2019.

The uncompensated care pool payments help offset the costs of uncompensated care, including indigent care, provided by local hospitals. DSRIP pool payments are incentives to hospitals and other providers to improve the health of patients and enhance access to and the quality and cost-effectiveness of health care.

Under the sec. 1115 waiver, eligibility for the uncompensated cost pool or

DSRIP pool requires participation in a regional health care partnership, in which governmental entities, Medicaid providers, and other stakeholders develop a regional plan. Governmental entities must provide public funds called intergovernmental transfers to draw down funds from these pools.

Since 2013, the Legislature has authorized several counties and one city to create a local provider participation fund to access federal matching funds under the sec. 1115 waiver.

DIGEST:

HB 2062 would authorize the creation of a health care provider participation program in a county that met certain location and population requirements and was not served by a hospital district or public hospital (Grayson).

Program creation. The commissioners court could, by majority vote, adopt an order authorizing the county to participate in a county health care provider participation program. The program would authorize the county to collect a mandatory payment from each institutional health care provider in the county.

Mandatory payments would be deposited in a local provider participation fund (LPPF), which could be used for certain intergovernmental transfers and indigent care programs.

Each year, the commissioners court would be required to hold a public hearing on the amount of any mandatory payments required and how that revenue would be spent. Notice of the hearing would be published in a newspaper of general circulation in the county at least 10 days before the hearing.

Mandatory payments. The bill would require mandatory payments to the LPPF to be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment could not exceed six percent of the aggregate net patient revenue of all the paying hospitals. A paying hospital could not add a mandatory payment as a surcharge to a patient.

If a mandatory payment under this bill was ineligible for federal matching

funds, the county could provide an alternative provision or procedure that conformed with the requirements of the federal Centers for Medicare and Medicaid Services.

Use of funds. The LPPF consists of all the revenue received by mandatory payments, money received from the Health and Human Services Commission (HHSC) as a refund of an intergovernmental transfer to the state for Medicaid supplemental payments, and the earnings of the fund.

Money in the LPPF could be used only to:

- fund intergovernmental transfers to the state to provide the nonfederal share of Medicaid supplemental payments under the sec. 1115 waiver;
- fund intergovernmental transfers to the state for Medicaid managed care organizations dedicated for payment to hospitals;
- subsidize indigent programs;
- refund a portion of a mandatory payment collected in error;
- refund hospitals the share of money received by the county from HHSC not used for Medicaid supplemental payments; and
- associated administrative expenses.

The bill would prohibit money in the LPPF from being commingled with other county funds. An intergovernmental transfer of funds could not be used to expand Medicaid eligibility.

Federal waiver or authorization. If a state agency determined that a waiver or authorization from a federal agency was necessary to implement the bill, the agency would be required to request that waiver or authorization and could delay implementation of the bill.

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

HB 2062 would create a local provider participation fund (LPPF) in

Grayson County, allowing the county to access federal funds allocated for uncompensated care costs. Grayson County hospitals have incurred more than $32 million in uncompensated care costs by treating individuals without insurance. While a mechanism is in place to draw down supplemental payments under the sec. 1115 waiver, Grayson County does not have a county hospital to finance the intergovernmental transfer and access its share of funds. The bill would authorize the county to require mandatory payments from local hospitals to fund intergovernmental transfers. LPPF facilities would increase funding for hospitals without expanding Medicaid, increasing state property taxes, or increasing taxes for the residents of Grayson County.

The bill would not create a new burden on federal taxpayers, but rather would help Grayson County access its share of funds through an existing federal program.

OPPONENTS SAY:

While the program created under HB 2062 would not increase state or county taxes, the sec. 1115 waiver is still a burden on federal taxpayers.